



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/143494

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 25, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the MILWAUKEE CTY DEPT HUMAN SERVICES in regard to FoodShare benefits (FS), a hearing was held on September 20, 2012, at Sheboygan, Wisconsin.

The record was held open to give the Milwaukee County Department of Human Services an opportunity to supplement the record with a history of EBT transactions. The packet has been marked as Exhibit 5 and entered into the record.

The issue for determination is whether the Milwaukee County Department of Human Services (the agency) correctly determined that Petitioner was over-issued FoodShare benefits in the amount of \$1577.00 from October 1, 2011 to May 31, 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Katherine May and Belinda Bridges  
MILWAUKEE CTY DEPT HUMAN SERVICES  
1220 West Vliet St  
1ST Floor, Room 109A  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. Petitioner applied for and received FoodShare benefits beginning sometime in June 2010. (Petitioner's testimony; Exhibit 4, pg. 27)
3. On April 3, 2011, Petitioner was taken into custody on burglary charges and a Department of Corrections hold. Petitioner has been in custody ever since, because his probation and extended supervision were revoked on July 20, 2011 and because he was subsequently convicted of burglary in case 2011CF000061 and sentenced to four years of initial confinement. (Petitioner's testimony; Exhibit 4, pgs. 4 and 5)
4. Petitioner did not notify the agency of his incarceration, but instead just assumed that his benefits would end. (Petitioner's testimony)
5. Up until his incarceration in April 2011, Petitioner lived with his mother at [REDACTED] [REDACTED]. (Petitioner testimony)
6. In April 2011, the agency contacted Petitioner and scheduled an interview for May 4, 2011 for a FoodShare renewal. (Exhibit 4, pg. 8)
7. On May 4, 2011, someone spoke to the agency by phone and completed a FoodShare renewal. (Exhibit 4, pgs. 8 and 9)
8. The agency sent Petitioner notices at the [REDACTED] address on May 5, 2011, September 12, 2011, September 26, 2011, October 10, 2011, indicating his benefits were either decreasing or increasing. (Exhibit 4, pgs. 28-50)
9. On April 24, 2012, someone contacted the agency to update Petitioner's address to [REDACTED] [REDACTED]. This is the current address for Petitioner's mother. (Testimony of Petitioner, Exhibit 4, pg. 8)
10. On May 3, 2012, someone conducted a FoodShare renewal by phone. (Exhibit 4, pg. 8)
11. On May 8, 2012, the agency became aware that Petitioner was incarcerated after received an inmate locator website report. (Testimony of Ms. Bridges; Exhibit 4, pg. 8)
12. On July 16, 2012, the agency sent Petitioner a Notification of FoodShare Overissuance, Claim number 7900361097, indicating that he was over-issued FoodShare benefits in the amount of \$1577.00 for the period of October 1, 2011 until May 31, 2012. (Exhibit 4, pg. 12)
13. The July 16, 2012 notice was sent to the [REDACTED] address. (Id.) Petitioner's mother subsequently notified Petitioner of the July 16<sup>th</sup> letter. (Petitioner's testimony)
14. Petitioner filed a request for Fair Hearing that was received by the Division of Hearings and Appeals on August 25, 2012.

### **DISCUSSION**

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also FoodShare Wisconsin Handbook, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

"An individual who is incarcerated for more than 30 days is ineligible for FoodShare unless they meet all Huber criteria listed below:

1. Intends to return home after his or her confinement
2. Continues to exercise care and control of his/her children
3. Continues to plan for the support and care of his or her children
4. Is released to attend to the needs of his/her family and to purchase or prepare meals with his/her family"

*FSH §3.2.1.2.2*

Petitioner is not a Huber inmate. He has been sentenced to the Wisconsin State Prison System. He has been incarcerated since April 3, 2011. As such, he has been ineligible for FoodShare benefits, since May 3, 2012, when someone completed a phone renewal for him.

In the case at hand, Petitioner did not dispute that FoodShare benefits were issued under his name, in the amounts stated in aforementioned claims, nor did he quarrel with the agency's calculation of the overpayment. However, Petitioner claims that he was the victim of identity theft and that someone has been collecting benefits using his identifying information without his permission.

Petitioner's claim of identity theft is not credible for the following reasons:

1. Petitioner attempted to claim that his state ID, bank card and his quest card were stolen sometime in March 2011 and that he wrote his pin number on his Quest card. However, if this was the case, Petitioner should have immediately notified EBT services to have the card cancelled. Further, this does not explain how the alleged thief would have had enough knowledge of Petitioner's personal information to complete two renewals, one in May 2011 and one in May 2012.
2. Petitioner testified inconsistently, claiming that his state ID was stolen in March 2011, but then testifying that among his property at the prison was a state ID, a driver's license and his social security card.
3. It is difficult to believe Petitioner didn't know that he was continuing to receive benefits, given that four notices went to his mother's residence between 2011 and 2012, indicating that he was continuing to receive benefits. Indeed, his mother had the wherewithal to advise him of the overpayment notice, so she certainly should have had the wherewithal to advise Petitioner of the other notices.
4. It is too coincidental that the alleged identity thief would correctly update an address to reflect Petitioner's mother's change of address.
5. Petitioner acknowledged that the phone number that the agency had on record for him, was his mother's correct phone number. It doesn't make sense for an alleged identity thief to provide a phone number that would allow the alleged victim an opportunity to stop the flow of benefits.

Based upon all of the foregoing, Petitioner's claim that he was not complicit or negligent in the failure to report his incarceration to the agency, is not credible.

Given that the Petitioner was due for a renewal in May 2011, he was obligated to report his incarceration that at that time per *FSH* §2.2.1, which states, "The certification for FS eligibility for most food units is 12 months...Recipients must complete an interview (2.1.3)(review) and verify current household information

in the last month of the certification period in order to be recertified and continue receiving FS benefits.” See also 7 CFR 273.14(a); 7 CFR 273.10(f) Petitioner failed to report his incarceration and as a result, was over-issued FoodShare benefits.

### **CONCLUSIONS OF LAW**

The agency correctly determined that Petitioner was overissued FoodShare benefits in the amount of \$1557.00 for the period of 10/10/11 to 05/31/12.

**THEREFORE, it is**

### **ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

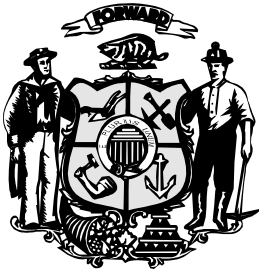
Given under my hand at the City of Milwaukee,  
Wisconsin, this 9th day of October, 2012

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Mayumi M. Ishii

Administrative Law Judge  
Division of Hearings and Appeals

c: Department of Health Services - email  
MILWAUKEE CTY DEPT HUMAN SERVICES, email - Milwaukee Human Services



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 9, 2012.

MILWAUKEE CTY DEPT HUMAN SERVICES  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability